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Paper No. 9

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OFFICE OF PETITIONS

In re Application of :
Mark Colaio : DECISION REFUSING STATUS
Application No. 10/015,739 : UNDER 37 CFR 1.47(b)
Filed: 12 December, 2001 :
Atty Dckt No. CF-36 :
:

This is in response to the renewed petition under 37 CFR 1.47(b) filed on 25 October, 2002.

The petition is again **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.
Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 12 December, 2001, without an executed oath or declaration. Accordingly, on 23 January, 2002, a "Notice To File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing. The petition filed on 24 June, 2002, was dismissed on 26 August, 2002.

In response, on 25 October, 2002, the present renewed petition was filed. Petitioners assert that a copy of the application was sent to the deceased inventor's legal representative, that proprietary interest has been established, and that irreparable harm has been shown.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest, and
- (6) proof of irreparable damage.

The petition lacks item (5).

In regards to item (5), petitioners have not shown sufficient proprietary interest in the subject matter to justify filing of the application under 37 CFR 1.47(b).¹¹ In support, petitioners have presented "a portion of an unsigned employment agreement between the deceased inventor and the assignee." Petitioners state that the original executed agreement was lost in the World Trade Center attack of 11 September, 2001. Since the executed copy of the agreement is no longer available, it is suggested that petitioners provide the requisite showing by providing a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction award the title of the invention to the Rule 1.47(b) applicant.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

¹¹MPEP 409.03(f).

Telephone inquiries related to this decision should be directed to the undersigned at (703) 308-6918.



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